



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DEVON PROPERTIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR, (MNSD), FF

Introduction

This hearing was convened in response to the landlord's application for a monetary award and an Order to retain the security deposit of the tenancy. The hearing was conducted by conference call. The landlord and the tenant with their legal counsel attended and participated in the hearing. Both parties acknowledged the exchange of their evidence before the hearing. The parties were provided opportunity to mutually resolve their dispute to no avail. Despite the abundance of evidence only the relevant evidence is described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?

Background and Evidence

The relevant and undisputed evidence in this matter is as follows. The tenancy agreement was entered into and signed by the parties November 18, 2016. The tenancy started on December 15, 2016 for a one year fixed term ending December 31, 2017. It is relevant that the tenancy agreement is inclusive of a clause for *liquidated damages* in the amount of \$500.00. At the outset the landlord collected a security and pet damage deposit respectively in the amounts of \$680.00 of which the landlord retains solely the security deposit in trust. In the tenancy the payable monthly rent was \$1360.00.

The tenancy ended on or about the middle of May 2017 when the tenant vacated.

The parties testified that immediately from the first day of the tenancy on December 15, 2016 the tenant was displaced due to a WorkSafeBC Order preventing initial occupation of the rental unit due to the presence of asbestos. The landlord immediately accommodated the tenant into another unit of the landlord in a nearby building with a view to returning the tenant to their intended rental unit as soon as possible. The parties came to agreement on certain compensation to the tenant equal to the rent for the balance of December 2016, and an amount for moving expenses of \$400.00.

The equivalency, and the services and facilities of the alternate rental unit is disputed by the tenant in their document submissions.

Due to circumstances beyond the control of either party the tenant was prevented from occupying the originally intended rental unit for months, and to the end of the tenancy. From the outset of 2017 to when they vacated in May 2017 the tenant did not satisfy any of the rent owed under the tenancy agreement. The landlord argued they did all they could to compensate the tenant for the circumstances beyond either of their control, including financial compensation, re-accommodation to a hotel with meal allowance and an eventual 'evacuation rebate'. The tenant further argued that it was never made clear to them that the agreed rent under the tenancy agreement was still owed by them. The tenant's legal counsel 'skirted' with the doctrine of *frustration* but did not advance direct evidence in this regard.

The landlord seeks the unpaid rent from January to May 2017 in the mitigated/adjusted amount of \$5001.29, which amount includes a rebate to the tenant of \$1798.71. The landlord also seeks the \$500.00 liquidated damages amount within the tenancy agreement. The landlord argued that despite the circumstances in this matter the tenant is obligated to pay the rent under the agreement and having breached the agreement the landlord is owed the agreed liquidated damages.

Analysis

On preponderance of the evidence I find the following relevant.

Section 16 of the Act states as follows,

Start of rights and obligations under tenancy agreement

- 16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 26 of the Act, in relevant part, states as follows,

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that despite the frustrating and unavoidable circumstances in this matter, the landlord acted reasonably to fulfill their obligations under the tenancy agreement and provide the tenant with a measure of equivalence of the value of the tenancy agreement. In contrast, I don't accept the tenant fulfilled their basic obligation under the tenancy agreement, which is to pay rent.

As a result of all the above, I find that the landlord is entitled to the amount requested for rent in the mitigated sum of **\$5001.29**.

I have considered the landlord's request for the amount expressed in the tenancy agreement for liquidated damages of \$500.00. I find that a liquidated damages clause in the tenancy agreement, in order to not be a penalty, must represent or state that amount which the parties agreed at the outset of the tenancy as a genuine pre-estimate of costs incurred by the landlord to re-rent the unit in the event the tenant breached the fixed term nature of the tenancy agreement. If the amount for liquidated damages is extravagant or unclear the liquidated damages clause may be interpreted as a penalty or unconscionable and therefore unenforceable in legal proceedings. In this matter I find the parties agreed pre-estimate of costs is neither extravagant nor unclear, therefore I grant the landlord the amount agreed as liquidated damages, of **\$500.00**.

The landlord is further entitled to recover their filing fee for their application. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Unpaid rent - to end of tenancy - mitigated	\$5001.29
<i>Liquidated damages clause</i>	\$500.00
Filing Fee	\$100.00
<i>Less Security Deposit in trust</i>	-\$680.00
Total Monetary Award to landlord	\$4921.29

I Order that the landlord retain the security deposit of \$680.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance

due of **\$4921.29**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

Conclusion

The landlord's application has been allowed in the above terms as Ordered.

This Decision is final and binding.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Residential Tenancy Act.

Dated: December 13, 2017

Residential Tenancy Branch